

## **707 KAR 1:370. Children with disabilities enrolled in private schools.**

RELATES TO: KRS 157.200, 157.220, 157.224, 157.226, 157.230, 157.250, 157.260, 157.270, 157.280, 157.285, 157.290, 157.360, 158.030, 158.100, 158.150, 160.290, 34 C.F.R. 300.1-300.818, 20 U.S.C. 1400-1419

STATUTORY AUTHORITY: KRS 156.070(1), 156.160, 157.220, 157.224, 157.260, 167.015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.200 to 157.290 establish the statutory framework for special education programs in local school districts. KRS 157.220 requires the Kentucky Board of Education to adopt rules and administrative regulations for proper administration of these programs. KRS 156.035 authorizes the Kentucky Board of Education to implement any act of Congress appropriating funds to the state and to provide for the proper apportionment and disbursement of these funds in accordance with state and federal laws. 20 U.S.C. 1407 and 1412 and 34 C.F.R. 300.100 require that policies and procedures be adopted to assure the apportionment and disbursement of federal funds for exceptional children programs in accordance with applicable laws. This administrative regulation establishes standards for school districts to make appropriate educational services available to children with disabilities who have been enrolled in private schools by their parents.

Section 1. Children with Disabilities Enrolled in Private Schools by Their Parents when FAPE is at Issue. (1) An LEA shall make FAPE available to each child with a disability. If a parent decides to place his child with a disability in a private school after the offer of FAPE, the LEA shall not be required to pay for the cost of the private education. Disagreements between a parent and the LEA regarding the availability of a program appropriate for the student and financial responsibility shall be subject to the due process procedures in 707 KAR 1:340.

(2) If a parent of a child with a disability, who previously received special education and related services under the authority of the LEA, enrolls the child in a private school without the consent of or referral by the LEA, a hearing officer or a court may award financial reimbursement to the parent if it is determined that the LEA did not offer FAPE to the child in a timely manner and the private placement is appropriate. This may be awarded even if the parents did not receive consent from the LEA for the private placement and the LEA did not make a referral to the private school. A hearing officer or a court may determine a private school placement to be appropriate even though it does not meet state standards that apply to an LEA.

(3) The amount of the financial reimbursement described in subsection (2) of this section may be reduced or denied if:

(a) At the most recent ARC meeting prior to the removal by the parents of their child with a disability to the private school, the parents did not inform the LEA that they were rejecting the proposed LEA placement, including stating their concerns and their intent to enroll the child in a private school at public expense;

(b) The parents did not give written notice to the LEA of the information described in paragraph (a) of this subsection at least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child;

(c) Prior to the parent's removal of the child, the LEA informed the parents of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or

(d) There is a judicial finding that the actions taken by the parents were unreasonable.

(4) The amount of financial reimbursement shall not be reduced or denied for the failure to provide the notice described in subsection (3) of this section if:

(a) The parent is illiterate;

(b) Compliance with the notice requirement would likely result in physical or serious emo-

tional harm to the child;

(c) The school prevented the parent from providing the notice; or

(d) The parent had not received notice from the LEA of his obligation to provide this notice.

Section 2. Child Find for Children with Disabilities Enrolled by Their Parents in Private School. (1) An LEA shall locate, identify, and evaluate all private school children with disabilities, including school children attending private, religious schools within the boundaries of the LEA. These activities shall be comparable to the activities to locate, identify, and evaluate children with disabilities in the public schools. An LEA in which private schools are located shall include parentally-placed private school children who attend those schools but reside in a state other than Kentucky in the LEA's child find activities.

(2) The LEA shall maintain in its records and provide to KDE:

(a) The number of children evaluated under this section;

(b) The number of children determined to be children with disabilities under this section; and

(c) The number of children served under this section.

(3) An LEA shall consult with appropriate representatives of the private schools on how to carry out these activities.

(4) Child find activities shall be completed in a time period comparable to that for other students attending public school in the LEA. An LEA shall not consider the costs, including the cost of individual evaluations incurred by the LEA's child find activities, in meeting its obligation under Section 4(3) of this administrative regulation.

Section 3. Parental Consent. If a parent of a child who is parentally placed in a private school does not provide consent for the initial evaluation or the reevaluation or a parent fails to respond to such a request, the LEA:

(1) Shall not use the procedures in 707 KAR 1:340 for mediation, dispute resolution meeting, or a due process hearing;

(2) Shall not be required to consider the child as eligible for services under this administrative regulation; and

(3) Shall document its attempts to obtain parental consent which may include records of telephone calls, copies of correspondence, records of home or place of employment visits, and the results of these efforts.

Section 4. Basic Requirements. (1) A LEA shall provide special education and related services to parentally placed private school children with disabilities in accordance with the procedure found in Section 5 of this administrative regulation, to the extent consistent with the number and location of these children enrolled in private schools located within the school district boundaries.

(2) A service plan shall be developed and implemented for each private school child with a disability who has been designated by the LEA to receive special education and related services under Section 5 of this administrative regulation.

(3) To meet this requirement, a LEA shall spend a proportionate amount of the federal money it receives under the IDEA pursuant to 34 C.F.R. 300.133. This amount shall be determined after the LEA has completed its child find activities and submitted a child count figure to KDE. This child count shall be conducted on December 1 of each year.

Section 5. Consultation. (1) A LEA shall consult in a meaningful and timely fashion with private school representatives, and parents or representatives of parents of parentally-placed school children with disabilities during the design and development of special education and

related services regarding the following:

(a) The child find process, including how children suspected of having a disability can participate equitably and how parents, teachers, and private school officials will be informed of the process;

(b) The determination of the proportionate share of federal funds, including how calculated;

(c) How the consultation process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services;

(d) How, where, and by whom special education and related services will be provided including:

1. A discussion of the types of services, including direct services and alternate service delivery methods;

2. How special education and related services will be apportioned if funds are not sufficient to serve all parentally placed private school students with disabilities; and

3. How and when those decisions will be made; and

(e) How the LEA will provide a written explanation to the private schools of the reasons why the LEA chose not to provide services directly or through a contract, if the LEA disagrees with the views of the private school representatives.

(2) When timely and meaningful consultation has occurred, the LEA shall obtain a written affirmation signed by the representatives of the private schools. If a private school does not provide the affirmation within a reasonable period of time, the LEA shall forward the documentation of the consultation process to the KDE.

Section 6. Services Provided. (1) An LEA shall ensure that services provided under a services plan shall be provided by personnel meeting the same standards as personnel providing services in the public school, except private school teachers that provide services under a service plan shall not have to meet the highly-qualified special education teacher requirements of 20 U.S.C. 1401(10).

(2) Private school children with disabilities may receive a different amount of services than children with disabilities in public schools. There shall be no individual right to special education and related services, but the student shall receive the services provided in the service plan in light of the services the LEA has determined to provide.

(3) A private school child with a disability who has been designated to receive services shall have a services plan that describes the specific special education or related services that the LEA will provide in light of the services the LEA has determined to provide private school children with disabilities through the process in Section 5 of this administrative regulation.

(4) The services plan shall, to the extent appropriate:

(a) Meet the requirements of an IEP under 707 KAR 1:320 with respect to the services provided; and

(b) Be developed, reviewed, and revised consistent with the requirements to develop, review, and revise IEPs.

(5) Services delivered through a service plan shall be provided by:

(a) Employees of the LEA; or

(b) Through a contract with the LEA.

(6) Special education and related services provided through a service plan shall be secular, neutral, and nonideological.

Section 7. Location of Services. (1) A service to a private school child with a disability may be provided at a site determined by the LEA. If necessary for the child to benefit from or partic-

ipate in the services provided under a services plan, the private school child with a disability shall be provided transportation:

- (a) From the child's school or the child's home to a site other than the private school; and
  - (b) From the service site to the private school, or to the child's home, depending on the timing of the services.
- (2) An LEA shall not be required to provide transportation from the child's home to the private school.
- (3) The cost of transportation may be included in calculating the amount to be expended on private school children with disabilities.

Section 8. Due Process Procedures. (1) The due process procedures afforded to parents and children with disabilities described in 707 KAR 1:340, Sections 4, 6, 8, 9, 10, 11, 12 shall not apply to complaints that an LEA failed to meet the requirements of this administrative regulation, including the provision of services indicated on a services plan. However, these requirements may be the basis for a written formal complaint under 707 KAR 1:340, Section 7. The due process procedures described in 707 KAR 1:340 shall apply to complaints that an LEA failed to complete its responsibilities under child find for private school children with disabilities and its responsibilities to evaluate and determine eligibility for private school children with disabilities.

(2) A private school official has the right to submit a state written complaint to the LEA and the Kentucky Department of Education as outlined in 707 KAR 1:340, Section 7, for allegations that the LEA:

- (a) Did not engage in timely and meaningful consultation; or
  - (b) Did not give due consideration to the views of the private school official.
- (3) If the private school official submits a state written complaint, the official shall provide the basis of the alleged noncompliance by the LEA.
- (4) If the private school official is dissatisfied with the final decision of the Kentucky Department of Education, the official may submit a complaint to the Secretary of the United States Department of Education. If such a complaint is filed with the secretary, the Kentucky Department of Education shall forward the appropriate documentation to the Secretary.

Section 9. Restrictions on Serving Nonpublic Students. (1) An LEA shall not use funds under Part B of IDEA to finance the existing level of instruction in a private school or to otherwise benefit the private school. The LEA shall use the funds provided under IDEA to meet the special education and related services needs of private school children with disabilities but not for:

- (a) The needs of a private school; or
  - (b) The general needs of the students enrolled in the private school.
- (2) An LEA may use funds under Part B of IDEA to make public school personnel available in private schools to the extent necessary to provide services under a services plan and if those services are not normally provided by the private school.
- (3) An LEA may use funds under Part B of IDEA to pay for the services of private school personnel to provide services under a services plan if the employee performs the services outside his regular hours of duty and the employee performs the services under the supervision and control of the LEA.
- (4) The LEA shall keep title to and exercise continuing administrative control of all property, equipment, and supplies that the LEA acquires with funds under Part B of IDEA and uses for the benefit of private school children with disabilities. An LEA may place equipment and supplies in a private school for the period of time needed to provide the services.
- (5) The LEA shall ensure that the equipment, and supplies placed in a private school are

used only for Part B purposes and can be removed from the private school without remodeling the private school facility.

(6) The LEA shall remove equipment and supplies from the private school if the equipment and supplies are no longer needed for Part B purposes, or if removal is necessary to avoid unauthorized use of the equipment and supplies.

(7) The LEA shall not use any funds under Part B of IDEA for repairs, minor remodeling, or construction of private school facilities. (26 Ky.R. 2146; 27 Ky.R. 507; eff. 8-14-2000; 33 Ky.R. 3492; 34 Ky.R. 564; eff. 11-5-2007; Crt eff. 11-16-2018.)